

HOUSE No. 3418

By Mr. Travis of Rehoboth, petition of Philip Travis for legislation to protect the rights of private property owners. Bonding, Capital Expenditures and State Assets.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT PROTECTING THE RIGHTS OF PRIVATE PROPERTY OWNERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 30A of the General Laws is hereby
2 amended in Section 1, by inserting at the end thereof the
3 following definitions:—

4 (7) “Policies that have constitutional implications” means cur-
5 rent or proposed regulations as defined above, law, agency policy
6 statement, directive, or other restriction that, if implemented or
7 enacted could affect a taking of private property without due
8 process of law, such as policies, regulations, orders or agreements
9 that propose or condition requirements or limitations on private
10 property use, or that require dedications or exactions from owners
11 of private property. This term does not include actions in which
12 the power of eminent domain is formally exercised, or actions of
13 law enforcement involving seizure of property for forfeiture or as
14 evidence in criminal proceedings.

15 (8) “Private property” means all real property protected by
16 amendments V and XIV of the constitution of the United States,
17 or article X of the constitution of the Commonwealth of Massa-
18 chusetts.

19 (9) “Taking” means an uncompensated damaging or deprivation
20 of private property in violation of the United States constitution or
21 the constitution of the commonwealth.

1 SECTION 2. Chapter 30A of the General Laws is hereby
2 amended by inserting after Section 1C the following new
3 section:—

4 Section 1D. The attorney general shall develop a checklist and
5 guidelines by December 31, 1998, to assist agencies in the identi-
6 fication and evaluation of policies that have constitutional impli-
7 cations, including policies that may result in a taking. The
8 attorney general shall review and update the checklist and guide-
9 lines at least on an annual basis to maintain consistency with
10 amendments to the laws.

1 SECTION 3. Chapter 30A of the General Laws is hereby
2 amended in Section 5 by inserting after the second paragraph, the
3 following paragraphs:—

4 Any agency proposing or implementing policies that have con-
5 stitutional implications shall designate an official or officials in
6 the agency to be responsible for ensuring compliance with the
7 provisions of this chapter. Each agency policy that has constitu-
8 tional implications shall be submitted to the designated official or
9 officials for review. Using the checklist and guidelines prepared
10 pursuant to Section 1D, the designated official or officials shall
11 prepare a constitutional impact assessment which includes
12 analysis of at least the following elements: (A) A description of
13 how the policy affects private property including the likelihood
14 that the policy could result in a taking of private property without
15 due process of law; (B) Alternatives to the policy that would ful-
16 fill the agency's legal obligations but that would reduce the
17 impact on the private property owner and the risk of a taking; and
18 (C) An estimate of the financial cost to the commonwealth for
19 compensation, and a source of funding.

20 Prior to the implementation of any policies that have constitu-
21 tional implications a copy of the constitutional impact assessment
22 shall be provided for review by the Secretary of Administration
23 and Finance and by the Committees on Ways and Means of the
24 Senate and House of Representatives.

25 Any award made to an owner of private property from the com-
26 monwealth for a taking under this act shall include an award of
27 reasonable costs and attorney's fees.

1 SECTION 4. Chapter 30A of the General Laws is hereby
2 amended by inserting after Section 5, the following new
3 section:—

4 Section 5A. Owners of private property who successfully estab-
5 lish that any such policy having constitutional implications results
6 in an unconstitutional taking shall be awarded reasonable costs
7 and attorney's fees incurred in establishing their claim. The reme-
8 dies provided in this chapter shall be in addition to any other
9 remedies provided by law.

10 The effect of policies that have constitutional implications on
11 the fair market value of affected property shall be reflected in the
12 assessed valuation of that real property for taxes, levies and
13 similar purposes.